IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961.

No. 25.

THE FEDERAL LAND BANK OF WICHITA,
Petitioner,

vs.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF STATE OF KANSAS.

BRIEF FOR THE RESPONDENTS.

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QUESTIONS PRESENTED.

1. Whether the petitioner's personal property here involved is being held pursuant to one of the governmental functions delegated to petitioner by the Federal Farm Loan Act of July 17, 1916.[1]

2. If not, whether this personal property enjoys express immunity from state taxation under Section 26 of this Act or implied immunity under the Constitution.

1. 39 Stat. 360, as amended.

SUMMARY OF ARGUMENT.

The question presented by this case does not appear to have been previously decided by this Court. However certain fundamental principles governing the powers of federal instrumentalities which have been previously enunciated by this Court are pertinent here as they form the foundation upon which the decision of the Kansas Supreme Court was based. The federal government is as stated by this Court a government of delegated powers.[2] Federal instrumentalities created by Congress to carry out those delegated powers possess, in turn, only those powers which are expressly or impliedly delegated to them by Congress or which are incidental to the exercise of those delegated powers.[3] Powers which are not thus granted to a federal instrumentality have been held by this Court to be impliedly prohibited to them.[4] The scope and extent of those powers enjoyed by a federal instrumentality are to be found solely in the statute which created them.[5] Since the scope of the powers enjoyed by federal instrumentalities is defined and limited by these principles it would seem likewise fundamental to the federal system that the scope of the tax immunity expressly granted to one of them, such as the petitioner Land Bank, was intended to immunize only that property which is held by the instrumentality in furtherance of its delegated powers. It would also appear fundamental that Congress could not constitutionally extend the scope of tax immunity for property beyond the

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2. *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U.S. 95.

3. *Stark* v. *Wickard*, 321 U.S. 288; *California Nat'l Bank* v. *Kennedy*, 167 U.S. 362, 366.

4. *First Nat'l Bank* v. *Converse*, 200 U.S. 425.

5. *Bradfield* v. *Roberts*, 175 U.S. 291.

scope of the instrumentality's delegated power to hold property. For the holding of property which is not pursuant to and in furtherance of the instrumentality's delegated federal powers could not be said to be serving any governmental function and therefore would not be entitled to governmental tax immunity. This Court has held in *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U.S. 95, that:

> "* * * Congress has authority to prescribe tax immunity for activities connected with, or in furtherance of, lending functions of federal credit agencies." (l.c. 103.)

The corollary of this power must be that Congress has no power to grant tax immunity to property or activities which is not connected with or in furtherance of an instrumentality's delegated functions. Congress created the Land Bank, delegated to it certain powers and then inserted in the law an express tax immunity section (Section 26, Federal Farm Loan Act of 1916, 39 Stat. 380, 12 U.S.C. 931), which tax immunity section must necessarily be construed as a part of the entire statute. When this immunity section is construed as an integral part of the entire act the conclusion is inescapable that it was intended by Congress only to immunize that personal property which was being held by the Bank in furtherance of the powers delegated to the Bank in other parts of the Act. For it is not to be presumed that Congress intended that Land Banks should exceed their delegated powers and hold property in excess of those powers; therefore, it should not be presumed that Congress intended to grant tax immunity to any such unlawfully held personal property.

In this case the petitioner Land Bank acquired the property in the exercise of its power to protect its mortgage loan on the property. However, when it sold the property,

reserving one-half of the mineral estate, it fully recouped its mortgage loan and the loss suffered by reason of its mortgage foreclosure. Therefore the lawful purpose for which this property was originally acquired was at an end. There was no other statutory power of the Bank which would authorize it to retain this mineral estate. Retention of the mineral estate *solely* for the purpose of speculating on future mineral developments or for the purpose of profiting by engaging in the oil and gas business through leasing it for production is not an express, implied or incidental power of the Bank and such property was therefore not entitled to tax immunity. Petitioner apparently does not contend that the holding of this particular mineral estate was an incident to protecting its debt or recouping its loss on the foreclosure. Ownership and development of such real property would appear to be authorized only where such activity was an incident to protecting and recouping mortgage indebtedness on the property.

The petitioner argues that it is organized in part for profit and therefore it is not foreclosed from engaging in this business activity and ownership (or, presumably, any business activity or ownership) so long as such ownership and activity is profitable.[6] But the only profits the Bank is authorized to make are those which arise from the exercise of its delegated powers—notably the interest it receives on its loans. When the Land Bank was spoken of by this Court in *Federal Land Bank* v. *Priddy*, 295 U.S. 229, at page 233 as being organized "in part at least, for profit,"

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6. "Thus, even if petitioner's retention of the mineral interest in question served no other purpose than to make a profit (a profit that would necessarily be passed on to farmer-borrowers under the cooperative features of the system), it was advancing the central purpose of the Federal Land Banks and was entitled to tax exemption." (Brief of Petitioner, p. 7.)

this Court had specific reference to Section 5 of the Federal Farm Loan Act of 1916[6a] which provides for the payment of dividends by the Land Bank, which dividends ultimately reach private investors. The profit-making there described had reference to the somewhat unique fact that private individuals obtained earnings in the form of dividends from an investment in a federal instrumentality. In this sense the Land Bank is spoken of as a profit-making institution as compared to the usual concept of a government instrumentality as non-profit. But this does not mean that the Bank was given the power to engage in any activity or own property solely because it is profitable, as Petitioner would appear to argue.

Since the property here involved is not being held in furtherance of Petitioner's delegated powers the tax exemption granted by Section 26 of the Federal Farm Loan Act of 1916 was not intended to nor could it constitutionally be extended to cover this property. The reason for governmental tax immunity—the protection of governmental functions—therefore fails of application here and the existence of tax immunity likewise fails under the facts of this particular case.

6a. 39 Stat. 1364, 12 U.S.C. 694.

ARGUMENT.

A. Petitioner Is Not Holding the Mineral Estate in the Furtherance of Any of Its Delegated Powers and Therefore No Governmental Function Is Involved in Its Ownership or in the Business Use to Which It Has Been Devoted.[7]

It seems clear from an examination of the Federal Farm Loan Act of 1916, as amended, that Congress intended that the Land Bank would acquire and hold farm lands only as an incident to its primary function of loaning money to farmers on the security of first mortgages on farm lands. It does not appear from the Act that Congress intended the Bank to become the proprietor and operator of farm land or of mineral estates solely for the sake of owning such property or solely for the purpose of speculation and profit from some business development and use of the land.

Section 13 of the Federal Farm Loan Act of 1916 defines and limits the purposes for which real estate may be owned by the Bank. The property here in question was lawfully acquired by the Bank in 1943 pursuant to the provisions of this Section which authorize the Bank "To acquire and dispose of * * * (b) parcels of land acquired in satisfaction of debts or purchased at sales under judg-

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7. In this case the Bank has leased the mineral estate for production and is deriving royalty payments as an incident to the lease; it is these royalties which have been subjected to the personal property tax by Kiowa County. Since the right to receive the royalties is based solely upon the Bank's ownership of the mineral estate, it follows that the absence *of any* federal function in holding the mineral estate necessarily results in the absence of a federal function in the receipt of royalties from its leasing.

ments, decrees or mortgages held by it * * *."[8] The purpose of this section obviously was to grant to the Bank the power to protect its mortgage debt and recoup its loss on foreclosure sales of property upon which it had loaned money. The power to deal with the property thereafter must be measured in terms of this original purpose of acquisition. Thus, in *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U.S. 591, this Court found that the Land Bank had the incidental power to purchase lumber in order to repair a farmstead which it had acquired upon foreclosure in order to protect the property and put into proper condition for resale. Since this purchase of lumber was but an incident to the Bank's power to protect and recoup its loan on the property, this Court found that it was immune from a sales tax imposed upon the purchase. But in this case the Bank's ownership and dealing with this mineral estate is no longer an incident to the original purpose for which the property was acquired in 1943, to-wit, protecting and recouping its financial loss on the property.

A national bank also possesses money-lending power and in carrying out this power its authority is substantially similar to that of the Land Bank. The following reasoning by the United States Circuit Court of Appeals in *Atherton* v. *Anderson*, 186 F.2d 515 (C.A. 6), is akin to the reasoning which respondent submits should apply here:

> "The controlling principle seems to us to be that while the bank has no power, either express or implied, to enter upon an original speculative enterprise, yet as an incident to its express powers, the bank has a right to acquire property, to put it into condition for resale, and where such property is a manufacturing establishment whose value depends substantially upon uninterrupted operation, we think implied power exists

8. 39 Stat. 372, 12 U.S.C. 781 Fourth (b).

to continue such operation for a time *providing the primary purpose of the bank is to save its debt rather than speculate in future profits* * * *." (l.c. 525) (Emphasis supplied.)

Since the Land Bank had fully recouped its loss on the property by 1946 the subsequent retention of the mineral estate obviously was not for the purpose of protecting its original debt on the property but was in the nature of speculation in the oil and gas business in the anticipation of future profits and was therefore not an incident to the Bank's money-lending functions.

The effect of the Bank's retention of the mineral estate, in the absence of any continuing need to protect or recoup a debt secured by this property, was the same as if the Bank had invested some of its funds in the outright purchase of a mineral estate solely for the purpose of speculating in future mineral discovery and profiting from the development and leasing of such minerals. In that case, as in the case at hand, it would seem beyond argument that the Bank's ownership was not related to nor an incident of its money-lending functions but would be, instead, a separate, independent and unauthorized business operation engaged in outside the scope of the Bank's delegated governmental functions delineated in the Federal Farm Loan Act of 1916.

The property in which the Bank may invest its funds is enumerated in the Federal Farm Loan Act of 1916. The Bank's primary investment is in first mortgages on farm lands.[9] Also the Bank is specifically authorized to invest in United States Government obligations direct or fully guaranteed.[10] But the Act does not authorize the Land Bank

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9. 39 Stat. 372, as amended, 12 U.S.C. 781, Second.

10. 39 Stat. 372, as amended, 12 U.S.C. 781, Eighth.

to invest its funds in the ownership of farm property or in mineral estates. In other words, while the Bank may acquire and hold such property when it is necessary as an incident to fulfilling its money-lending function and recouping on loans, it has been granted no independent power to own and invest in mineral estates or in oil and gas speculations *per se*. There is a material distinction between owning property as an incident to a Bank's money-lending function to secure an indebtedness of the Bank, which ownership is authorized, and the independent holding of the same property by the Bank solely as a business investment for profit, which is not authorized. This Court recognized a parallel distinction in the case of a national bank's ownership of corporate stock in *First National Bank* v. *Converse*, 200 U.S. 425. In that case this Court said:

> "No express power to acquire the stock of another corporation is conferred upon a national bank * * * (A) national bank may be conceded to possess the incidental power of accepting, in good faith, stock of another corporation *as security for a previous indebtedness. It is clear, however, that a national bank does not possess the power to deal in stocks. The prohibition is implied from the failure to grant the power* * * *." (l.c. 438, 439.) (Emphasis supplied.)

Applying the reasoning of *First National Bank* v. *Converse, supra,* to this case it appears that the Bank is treating this mineral estate as though there existed a separate and independent function of the Bank to hold, speculate and profit from real property even though the Act grants them no express and independent power to do this. Under Section 13 of the Act the Bank is granted the authority to acquire real property in satisfaction of debts and upon mortgage foreclosures and this power, construed in light of the primary money-lending function of the Bank, basically limits the Bank to holding and dealing with real property

acquired as security for a previous indebtedness with the primary purpose always in mind that the holding is for the purpose of securing its indebtedness and making itself whole again from the loan transaction. Here, as in *First National Bank* v. *Converse*, *supra*, the Bank enjoys no separate and independent power to invest in or to keep its funds invested in certain property (here, real estate, and in the *Converse* case, stocks) for speculation of profit without regard as to whether such holding was necessary and incidental to its money-lending function.

If Congress had intended the Bank to have the independent power to hold real property as a valid investment for the Bank's funds and if Congress intended that this power be separate and unrelated to any need to protect an indebtedness on the property it could have stated this intention by inserting an appropriate statement of this broad power in the Act, as it has done, for example, in the case of first mortgage loans and United States Government obligations.

While it is clear that the Bank has the power to take title to real property under Section 13 of the Act in satisfaction of debts or purchased at sales under judgments, decrees or mortgages held by it, when the Bank sold part of the property in 1946 and satisfied its debt the subsequent retention of part of the property could no longer be based upon its power to hold property as security for the debt; some *other* authorized purpose must exist if such continued and prolonged holding of the mineral estate is to be justified and found to be within the scope of the Bank's delegated governmental powers.

What other authorized purpose does the petitioner advance as justification for the continued holding of the mineral estate after 1946? At page 19 of its Brief peti-

tioner apparently concedes that the "reservation of the mineral right was not required to recoup losses suffered on the loan to which it related." At page 20 of its Brief petitioner suggests that it "may have suffered losses on other defaulted loans against which the earnings from the property in question would provide an offset." However there are no facts in the record to support this speculation. If petitioner had evidence of such facts and felt they were favorable to its case, it has failed to introduce them into the record of this case.

The petitioner's chief argument in support of its power to hold this mineral estate is this: if the retention of the mineral estate "served no other purpose than to make a profit (a profit that would necessarily be passed on to the farmer-borrower under the cooperative features of the system), it was advancing the central purpose of the Federal Land Banks and was entitled to tax exemption."[11]

Petitioner may be basing its argument that it enjoys the power of "profit-making" on a statement by this Court in *Federal Land Bank* v. *Priddy*, 295 U.S. 229. This Court there stated at page 233 that the Land Banks operate "in part, at least, for profit. § 5." In the *Priddy* case, however, this Court was not referring to the manner in which the Bank was authorized to earn its money but rather to the manner in which the Bank was authorized to distribute its earnings (*i. e.*, in the form of profits to its shareholders). Section 5 of the Act referred to by this Court in the above quotation permits dividends to be distributed by the Bank to its shareholders. This Court clearly was using the term "profits" in the sense that private individuals were authorized to receive dividends from their investment in a federal instrumentality which practice is in noteworthy contrast to

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11. Brief for the Petitioner, p. 7.

the more usual description of a governmental instrumentality as "non-profit".

However, petitioner has taken the word "profit" and evidently misconstrued its meaning so that it now argues that since it distributes "profits" to its shareholders this alone justifies and authorizes it to engage in "profit-making" activities and to own real property such as here involved solely on the basis that such ownership yields a "profit".

The fallacy in the chain of reasoning by which petitioner reaches the conclusion that the Act grants it the power to "profit" from the ownership and use of real property is this: petitioner points out that Section 5 of the Act specifically empowers it to distribute some of its earnings to its stockholders in the form of dividends causing a profit to be made by private individuals and thereby reducing the effective rate of interest paid by those individuals (who are also the farmer-borrowers). Since the ownership, speculation and development of mineral estates makes a "profit" it therefore, petitioner reasons, "contributes toward the salutary purposes of the Federal Farm Loan Act."[12]

This chain of reasoning mistakenly confuses the manner in which the Act authorizes petitioner to *distribute* its earnings (*i. e.*, as profits to farmer-borrowers) with the manner in which it may *obtain* its earnings in the first place. The plain fact is that Section 5 of the Act does not tell the Bank in what manner it may earn its profits but it only describes the manner in which it may distribute them.

Clearly the only profits which the Bank may earn are those which derive from the valid exercise of the Bank's statutory powers. Section 13 of the Act contains a de-

12. Brief for the Petitioner, page 25.

scription of the powers of the Bank which give rise to its earnings or profits. Obviously the Bank was designed to obtain its earnings primarily from its investment in first mortgage loans.[13] It was also specifically authorized to invest in government obligations.[14] Other earnings which might accrue to the Bank through ownership of property acquired in satisfaction of debts would be mere incidental profits arising from the Bank's primary money-lending function. At no place in the Act does there appear any statement of the power of the Bank to own property for the purpose of "profit-making". The extreme position taken by the petitioner that it enjoys the broad power of "profit-making" from property is based upon a mistaken understanding of the term "profit" as applied to the Bank.

If petitioner's reasoning concerning its power to own and operate property for profit's sake alone is correct then it would have the power to own any property which yielded a profit. There would be no discernible limit upon the extent of the property which the petitioner would be authorized to purchase and own nor would there be a limit upon the purposes to which the property could be devoted so long as it met petitioner's test of "profit-making".

Under petitioner's reasoning, for example, it would have the power to refine the oil and distribute the gas obtained from this mineral estate. It would also have the power to arrange for the marketing and retail sale of this oil and gas after its refining and transmission. And it goes without saying that the Federal Land Bank service station would be exempt from remitting state gasoline taxes on its retail sale of gasoline. In each of these instances the onwership and business activity of the property involved

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13. 39 Stat. 372, 12 U.S.C. 781, Second.

14. 39 Stat. 372, 12 U.S.C. 781, Eighth.

would meet petitioner's test of "profit-making" and hence would be permissible to the Bank if it so chose to operate.[15] It is not relevant to argue that the petitioner has not yet gone this far in dealing with this mineral estate and its incidents because the question here involved goes to the scope of petitioner's powers and not to the extent to which it has thus far chosen to exercise them.

In summary, petitioner's contention that it enjoys the broad power to engage in "profit-making" activities since they result in greater profits to the farmer-borrowers finds no support in the Act.

Section 13, Fourth of the Act, which authorizes the Bank to take title to real property in satisfaction of debts, also contains a provision as follows:

> "(b) * * * But no such bank shall hold title and possession of any real estate purchased or acquired to secure any debt due to it for a longer period than five years, except with the special approval of the Farm Credit Administration in writing * * *."[16]

It is respondents' position that the "special approval" which might be granted by the Farm Credit Administration to a Land Bank to hold property in excess of five years in no way broadens the basic limitation on the Bank's power to hold property only as an incident to its money lending function. Congress evidently intended to insure that the Land Banks would not retain title to property for protracted periods of time and, as a check against possible

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15. The petitioner's concept of its "profit-making" power would likewise justify it holding and operating for profit that farm property which it might acquire in mortgage foreclosure actions without regard to whether such holding was necessary to protect its indebtedness.

16. Federal Farm Loan Act of 1916, 39 Stat. 360, as amended, 12 U.S.C. 781, Fourth (b).

abuses of their power, Congress inserted this provision requiring "special approval" by the Farm Credit Administration before ownership could exceed five years.

From the nature of the Land Bank and its ownership by private individuals who stood to profit from its operations, it can readily be seen why Congress intended that an outside agency such as the Farm Credit Administration have some check upon the individual Banks in their ownership of real property. It was not intended by Congress that the Farm Credit Administration could authorize Banks to hold property after five years except to fulfill one of the delegated functions of the Bank such as protecting and recouping its indebtedness on a mortgage loan.

Although it is respondents' position that the Farm Credit Administration cannot in any event expand the purposes for which the Bank may own real estate, Respondents do wish to comment on the purported "special approval" granted by the Farm Credit Administration to all of the individual Land Banks, under its regulation, Farm Credit Administration Regulation, 6 C.F.R. 10.64. It is clear that the "special approval" spoken of by Congress in the Act created and delegated to the Farm Credit Administration a discretionary power to approve or disapprove ownership of particular real property beyond five years. In order for the Farm Credit Administration to exercise its discretionary power, it is necessary that it consider and evaluate the purposes or needs which an individual Bank might claim to be involved in seeking approval to hold property beyond five years. But the Farm Credit Administration has improperly purported to delegate its discretionary power to the Land Banks by the terms of this regulation.

Under the terms of this Farm Credit Administration Regulation Land Banks are granted the blanket power to

retain mineral interests "for periods in excess of five years when in the Bank's opinion it is in the Bank's interest to do so." Thus the decision to retain or not to retain a particular mineral interest in real property is left entirely up to the individual Bank, and, under the terms of this Regulation, need not be referred to the Farm Credit Administration for its evaluation and approval. It is a fundamental rule of administrative law that discretionary powers held by an administrative body may not be further delegated to some other officer or body. (*Cudahy Packing Company* v. *Holland*, 315 U.S. 357.) The Farm Credit Administration Regulation quoted above violates this principle that discretionary functions may not be redelegated. In effect, the Bank grants *itself* its own "special approval" to retain mineral estates beyond five years.

The property in question in this case has been held by the Bank in excess of five years pursuant to this improper Regulation and, therefore, the "special approval" required by the Act has not been properly granted by the Farm Credit Administration to the Bank for this prolonged holding. However, as noted, whatever force and effect, or lack of it, the Farm Credit Administration Regulation would have, it cannot, for the reasons stated, broaden the Bank's power so as to authorize it to hold this mineral estate in the manner and for the sole "profit-making" purpose under which it is presently being held.

The petitioner refers on page 24 of its Brief to certain bills introduced in Congress specifically dealing with the Land Bank's power to hold mineral estates, which bills did not pass the Congress. But the reason or reasons why these bills did not pass is sheer speculation. Perhaps Congress (or the committee where the particular bill died) felt that the scope of the Bank's powers and function was adequately delineated by existing legislation or that in

some cases the bills unnecessarily restricted the Banks from holding mineral interests where necessary to protect and recoup their mortgage debts; but this is, as stated, idle speculation and scarcely helpful to this Court in determining the question of whether the Bank had the power to retain the mineral estate in this case.

B. Personal Property Which Is Not Being Held by the Bank Pursuant to One of Its Delegated Powers but Is, Instead, Being Held Outside the Scope of Those Powers Does Not Enjoy Express Immunity from Taxation under Section 26 of the Federal Farm Loan Act of 1916, nor Does It Enjoy Implied Immunity under the Constitution.

The reason and justification for the rule of governmental tax immunity, whether it be implied immunity under the Constitution or express immunity granted by a statute such as Section 26 of the Federal Farm Loan Act of 1916, is the necessity to protect the lawful operations of the United States, acting through its instrumentalities.[17] In *Smith* v. *Kansas City Title and Trust Company*, 255 U.S. 180, this Court said, at page 213:

> "The exercise of such taxing power by the states might be so used as to hamper and destroy the exercise of authority conferred by Congress, *and this justifies the exemption.*" (Emphasis supplied.)

In *Pittmann* v. *Home Owners' Loan Corporation*, 308 U.S. 21, this Court said:

> "Congress has not only the power to create a corporation to facilitate the performance of governmental functions, but has the power to protect *the*

17. *Smith* v. *Kansas City Title and Trust Company*, 255 U.S. 180; *M'Culloch* v. *Maryland*, 4 Wheat. 316.

operations thus validly authorized." (l.c. 32, 33.) (Emphasis supplied.)

Thus it appears that the purpose of governmental tax immunity is to protect the operations of a federal instrumentality which are validly authorized and conferred upon such instrumentality by Congress. But where, as here, a federal instrumentality is owning and using property *not* in the performance of its governmental functions and not in the exercise of the authority conferred upon it by Congress, no reason or justification exists for finding that governmental tax immunity is, or ever was, intended to apply to it. It would be impossible for a tax upon property being held by an instrumentality such as the Land Bank outside the scope of its delegated power to interfere with the performance of *any* governmental function.

There has been no effort, intent or design on the part of the State of Kansas to tax any of the governmental property or purposes validly authorized to the Federal Land Bank by Congress. The imposition of this tax was specifically based upon the finding that this mineral estate held under these facts and circumstances was not being lawfully held by the Bank in furtherance of any of its delegated functions. Therefore the imposition of this tax in no way conflicts with the principles, reasoning or justification for governmental tax immunity which have been so clearly enunciated by this Court in a long line of decisions commencing with *M'Culloch* v. *Maryland,* 4 Wheat. 316; in fact the reasoning and justification for the tax immunity in those cases is entirely consistent with the imposition of the tax in this case, where no governmental function is involved.

When Congress enacted Section 26 of the Federal Farm Loan Act of 1916, did it intend that the tax immunity there

granted would extend beyond the rest of the Act and immunize property of the Land Bank which it might unlawfully hold outside the scope of its delegated functions? It would defeat logic and reason to argue that the same Congress which had defined and limited the powers of the Land Bank in other sections of the Act would insert a tax immunity section in the same Act with the intention that it ever be construed to be broader in scope than the rest of the Act or that was intended to protect property which it had not authorized the Land Bank to hold.

Construing the Act as a whole, the tax exemption granted to personal property by Section 26 of the Act must be construed to be limited to only that property being held or used by the bank in furtherance of those powers delegated to the bank by other sections of the Act. For it was the intention of Congress to immunize the Bank from taxation on personal property when the bank was engaged in the accomplishment of those functions which the Congress was therein delegating to it. It cannot rightfully be presumed that Congress ever intended for the Land Bank to exceed its delegated powers or to own property or engage in activities outside the scope and not in pursuance of those delegated powers. Therefore, it would be illogical to argue that Congress intended the tax immunity section to extend to such forbidden activities or unlawfully held property. That the tax immunity section is no broader in scope than the Act of which it forms a part would seem to be the only reasonable construction which could be placed on the Section.

Petitioner has quoted at length in its brief from discussions by congressional committees relating to tax exemption for the banks.[18] But here again the force of reason

18. Brief of Petitioner, pages 17 to 19.

and logic would compel the conclusion that these legislators were discussing tax immunity only as it would be extended and applied to the lawfully delegated functions of the Land Bank. Again it would be improper to assume that these gentlemen in their remarks were intending that the Banks exceed their delegated powers. And it would be likewise improper to assume that they were intending in their remarks that the tax exemption for which they were arguing would extend to any such unlawfully held property.

But assuming that Section 26 of the Act is construed to extend tax immunity to such unlawfully held property as here involved, such a construction would result in a situation where the Section would be unconstitutional in its operation. If the Congress has not authorized the Bank to hold this property under these circumstances, then there can be no governmental function involved; that is, the holding of the property cannot be traced back through the Act to Congress and thence to the Constitution and the people. It, therefore, follows that the Congress would lack the power to immunize such property from taxation since the granting of such immunity necessarily would *not* be in furtherance of any of the powers exercised by Congress under the Constitution. Therefore, to avoid this unconstitutional result, Section 26 should not be construed to extend to this property held by the Land Bank outside the scope of its governmental functions.

In *Bank of Commerce* v. *Tennessee*, 104 U.S. 493, this Court dealt with a bank created under the laws of Tennessee, which bank enjoyed exemption from all taxation other than a specific tax on its capital stock. The bank had the authority to hold real property in order to transact its business. The bank owned property on which a building was situated and it leased part of the property for purposes

other than its business. In speaking of the scope of the tax exemption available to the bank, this Court said:

> "The bank had no express authority to invest its capital in real property not required for that use. And it is to be presumed that the exemption from other than the designated taxes (on stock) was in consideration that the capital would be employed for its legitimate purposes. It certainly would not be pretended that the corporation by turning its whole capital into real property and engaging in the real estate business, could then, by force of the charter, escape liability to taxation for it under the general laws. But if the exemption could not be carried to that extent, it is difficult to fix any limit to the amount of real property which it may hold thus exempt, unless we take that prescribed by the charter. In our judgment, the limited exemption cannot be extended to property used beyond the actual wants of the corporation in carrying out the purposes of its creation. As well observed by the Supreme Court of the State, the contract of exemption, beyond the extent prescribed, ceased when taxable property was held for any other purpose.
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> "* * * (W)here the purpose for which a corporation may hold property is specified in connection with the exemption, the limitation of taxation designated must be held to *apply only to property acquired for such purposes.*" (l.c. 495.) (Material in parenthesis and emphasis supplied.)[19]

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19. And see also *Central Methodist Church* v. *Meridian*, 126 Miss. 780, 89 So. 650, where a Mississippi statute provided that all property belonging to any religious society was exempt from all taxation. The church acquired property in excess of that which another statute prescribed it might own. The court said: "We think this principle is sound; that it never was the purpose of the legislature to exempt from taxation any more property than the religious society could lawfully hold. The property involved here is in excess of the amount of property which a religious society can hold and it cannot be heard to claim an exemp-

This case supports the view that a tax exemption provision in a statute should not be construed to apply to property which may not be lawfully held under some other provision of the statute.

The Petitioner contends that even if there is a question or doubt as to its authority to hold this property, the property is nevertheless exempt under the "clear language of the exemption".[20] Petitioner's contention in this respect does not consider, however, the constitutional problem raised where this property is not being held pursuant to some delegated authority. Petitioner seems to argue that even if its ownership of the property was not authorized by Congress, Congress would nevertheless have the power to immunize such property. But petitioner does not explain how the lack of a governmental function in such a case could be overcome by the Congress and the tax immunity extended to the property in the absence of such governmental function.

It is a fundamental principle that where the reason for a rule of law ceases to apply the rule itself ceases.[21] This Court has said that the justification of governmental tax immunity for federal instrumentalities lies in the protection it affords to governmental functions exercised under an authority conferred by Congress.[22] The decision of the Kansas Supreme Court is based upon the finding that the property here taxed was not being used in furtherance

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tion from taxation, in a court of equity, of property which it holds in violation of the public policy and the laws of the land." (l.c. 652.)

20. Petitioner's Brief, page 25.

21. *Coke on Littleton*, Section 70b.

22. *Pittman* v. *Home Owners' Loan Corp.*, 308 U.S. 21; *Smith* v. *Kansas City Title and Trust Co.*, 255 U.S. 180.

of a governmental function conferred by Congress. From this finding the Court below concluded:

> "* * * (T)hat the Congress in enacting the exemption provision in sec. 931, above (Section 26), intended that the tax immunity there provided should apply only when the bank is engaged in the furtherance of its governmental function. Under the facts before us, how does the imposition of this personal property tax impede or interfere with the legitimate function of the federal instrumentality involved? It does not—and when the reason for the rule of tax immunity, namely, the protection of functions of government—fails—the rule fails." (R. 51.)

The decision below is in harmony with previous decisions of this Court and results from the proper and logical application of the principles of governmental tax immunity announced in those previous decisions to the facts of this case.

CONCLUSION.

The property here sought to be taxed is not being held by the petitioner Land Bank in pursuance of any of its governmental functions. Therefore the functions of government cannot be impaired or impeded by such taxation. The Kansas Supreme Court correctly concluded that the property was not therefore expressly or impliedly immune from taxation and its decision refusing to enjoin the tax should be sustained.

Respectfully submitted,

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